

August 1, 2007

The Honorable Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: In the Matter of Consumer Fair Use and Related Rights

Dear Chairman Majoras:

The Library Copyright Alliance (LCA) consists of five major library associations: the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association. These five associations collectively represent over 139,000 libraries in the United States employing 350,000 librarians and other personnel. These five associations cooperate in the LCA to address copyright issues that have a significant effect on the information services libraries provide to their users. The LCA's mission is to foster global access to information for creative, research, and educational uses.

We write to support strongly the request for investigation and complaint for injunctive relief filed by the Computer & Communications Industry Association (CCIA) in the above-referenced matter. The problem identified by CCIA is serious and requires intervention by the Federal Trade Commission. The false and misleading copyright warnings provided by publishers and motion picture distributors confuse library patrons and interfere with libraries fulfilling their mission.

17 U.S.C. 108 §§ (d) and (e) permit a library to make a copy of a work at a patron's request under certain conditions. One of these conditions is the posting at the place where orders are accepted, and on the order form, of a copyright warning specified by the Register of Copyrights. *See* 17 U.S.C. §§ 108(d)(2) and (e)(2). By regulation, the Register of Copyrights has established the following text as the necessary warning:

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be 'used for any purpose other than private study, scholarship, or research.' If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of 'fair use,' that user may be liable for copyright infringement.

This institution reserves the right to refuse of copying order if, in its judgment, fulfillment of the order would involve violation of the copyright law.

37 CFR § 201.14.

Patrons are confused by the clear contradiction between this copyright warning, which states that certain copies are permitted, and the warnings contained in some books, which state that no copies are permitted without the copyright owner's express permission. *See, e.g.*, CCIA Request at ¶¶ 39 and 41. Librarians must then reassure patrons that the copies they request are lawful, notwithstanding the publishers' assertion to the contrary.

Moreover, 17 U.S.C. § 108(f)(1) specifically provides that nothing in that section "shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright...." Pursuant to this provision, libraries across the country make photocopiers and other reproducing equipment available to their patrons, with an appropriate warning. (Unlike the section 108 (d) and (e) warning, neither the Copyright Act nor the CFR stipulate the wording of the 108(f) warning.) Here, too, patrons are confused by the contradiction between the library's notice allowing copying consistent with fair use, and the publisher's warning forbidding such copying. *See, e.g.*, CCIA Request at ¶¶ 28, 30, 34, and 36.

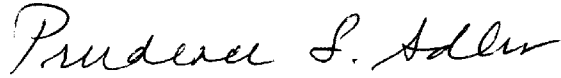
This confusion exists with a range of other uses patrons may wish to make of resources in a library's collection. A teacher, for example, may wish to show a class a film borrowed from her school library. While 17 U.S.C. § 110(1) clearly permits the performance of the film, the copyright warning inserted by the film's distributor may prohibit it. Unless the teacher happens to have ready access to a copyright lawyer, she has no way of knowing that the film distributor's prohibition has no legal effect.

Similarly, a creative writing professor might want to use photocopies of the first page of two novels in a writing seminar to demonstrate contrasting literary styles. Such classroom use falls squarely within the four corners of section 107, and the negotiated Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals. However, the copyright warning in one of the novels might state incorrectly that such reproduction violates the law.

The fair use analysis is complex enough without the obfuscation caused by intimidating, inaccurate copyright warnings. We urge the FTC to investigate this matter carefully, and issue

appropriate relief along the lines suggested by CCIA. We would be happy to meet with you or your staff to discuss our concerns in greater detail.

Respectfully submitted,



Prudence S. Adler
Associate Executive Director
Association of Research Libraries

On behalf of the Library Copyright Alliance: the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association. Contact information for each association is supplied below.



The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.
<http://www.aall.org/>
Contact: Mary Alice Baish (202-662-9200)



The American Library Association (ALA) is a nonprofit educational organization of over 65,000 librarians, library trustees, and other friends of libraries dedicated to improving library services and promoting the public interest in a free and open information society. <http://www.ala.org/>
Contact: Lynne Bradley (202-628-8410)



The Association of Research Libraries (ARL) is a nonprofit organization of 123 research libraries in North America. Its mission is to influence the changing environment of scholarly communication and the public policies that affect research libraries and the communities they serve. ARL pursues this mission by advancing the goals of its member research libraries, providing leadership in public and information policy to the scholarly and higher education communities, fostering the exchange of ideas and expertise, and shaping a future environment that leverages its interests with those of allied organizations.
<http://www.arl.org/>
Contact: Prue Adler (202-296-2296)



The Medical Library Association (MLA), a nonprofit, educational organization, is a leading advocate for health sciences information professionals with more than 4,700 members worldwide. Through its programs and services, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and the public. <http://www.mlanet.org/>
Contact: Carla Funk (312-419-9094 x.14)



The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves more than 12,000 members in 83 countries in the information profession, including corporate, academic and government information specialists. SLA promotes and strengthens its members through learning, advocacy and networking initiatives. <http://www.sla.org/>
Contact: Doug Newcomb (703-647-4923)